

Docket No. 47476-DIV (70342)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT: S. Hinuma, et al.

U.S.S.N.: 09/576,290

EXAMINER: D. S. Romeo

FILED: May 23, 2000

GROUP: 1947

FOR: POLYPEPTIDES, THEIR PRODUCTION AND USE

Assistant Commissioner for Patents  
Washington, D.C. 20231

Attention: Director of Group 1647

**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted by facsimile to Fax No. (703) 872-9306 at the U.S. Patent and Trademark Office on **September 4, 2002**.

By: Maggie C Hamelin

Maggie C. Hamelin

**PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT  
UNDER 37 C.F.R. 1.181**

Sir:

This is a Petition under Rule 1.181 for withdrawal of the Examiner's holding of abandonment in the above captioned matter on the grounds or basis that a response to the below described Office communication from the U.S. Patent and Trademark Office (USPTO) forming the basis of the abandonment (i.e., Failure to respond to the Office letter, mailed July 6, 2001) was filed by Applicants' representative in the U.S. Patent and Trademark Office (USPTO) on July 6, 2001.

**STATEMENT OF FACTS**

1. A Notice of Abandonment was received by the undersigned Agent on August 29, 2002. The Notice of Abandonment indicated that the application was abandoned in view of "Applicant's failure to file a timely reply to the Office letter

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mailed on December 12, 2001." A copy of the Notice of Abandonment is enclosed herewith.

2. I hereby state that a response to the Office letter mailed December 12, 2001 was submitted by facsimile to Technology Group 1600 at (713) 872-9306 at the U.S. Patent and Trademark Office (USPTO) on March 12, 2002, with a Certificate of Transmission by Facsimile dated March 12, 2002, copies of which are enclosed herewith.

3. I hereby state that a search of the file jacket for the subject application in the offices of Dike, Bronstein, Roberts & Cushman Intellectual Property Group of Edwards & Angell, LLP includes a copy of the Auto-Reply Facsimile Transmission that was received on March 12, 2002 from the U.S. Patent and Trademark Office (USPTO) to indicate receipt of the facsimile transmission of the response to the Office communication. A copy of the Auto-Reply Facsimile Transmission that was received on March 12, 2002 also is enclosed herewith.

#### **RELIEF REQUESTED**

Applicants respectfully request the Commissioner, based on the following arguments and the foregoing facts and statements, to withdraw the holding of abandonment and to reconsider the Amendment that was mailed on August 26, 2002.

#### **ARGUMENT**

The within petition and the related enclosures are being filed within two (2) months of the mailing date of the Notice of Abandonment. Accordingly, the within petition is considered to be timely filed [37 C.F.R. 1.181(f)].

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In the instant case, Applicants have included the required statements by the practitioner<sup>1</sup>, which establish timely filing of a response to the Office letter dated December 12, 2001, as well as any other documents mailed therewith.

In sum, Applicants did file a response to the Office letter dated December 12, 2001, within the statutory time period that formed the basis of the abandonment of the subject application. Thus, the abandonment of the subject application appears to be a result of an error in the processing of the response filed by facsimile transmission at the United States Patent and Trademark Office.

#### **REQUIRED FEE**

There is no fee required for the submission of a Petition under Rule 181. Moreover, a fee is not believed to be required for the consideration of the within Petition because the petition addresses an error of the Patent Office. However, if for any reason a fee is required for consideration of the within Petition, a fee paid is inadequate or credit is owed for any excess fee paid, the Commissioner is hereby authorized and requested to charge Deposit Account No. **04-1105**.

#### **ADDITIONAL INFORMATION**

If the USPTO requires any further information and/or clarification regarding the above, then Applicants respectfully request that the undersigned be telephoned immediately at the below listed number.

#### **ALTERNATIVE PLEADING**

In the event that the USPTO considers that the within Petition is not proper and/or that a Petition under 37 C.F.R. § 1.137 should have been filed by Applicants requesting revival of the subject application, then the within Petition shall also be considered a conditional petition under 37 C.F.R. § 1.137(a) requesting revival of an

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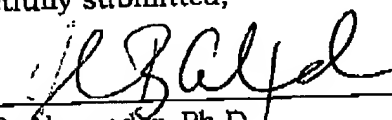
<sup>1</sup> See Statement of Facts, paragraphs 2-3.

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application because of an unavoidable delay based on the foregoing facts and arguments. If such a Petition is required, then the Commissioner is hereby authorized and requested to charge Deposit Account No. **04-1105** for the required fee [37 C.F.R. 1.17(l)].

Respectfully submitted,

Date: September 4, 2002

  
John B. Alexander, Ph.D.  
(Reg. No. 48,399)  
Dike, Bronstein, Roberts & Cushman  
Intellectual Property Practice Group  
EDWARDS & ANGELL, LLP  
101 Federal Street  
Boston, MA 02110-1800  
Tel: (617) 439-4444  
Fax: (617) 439-4170

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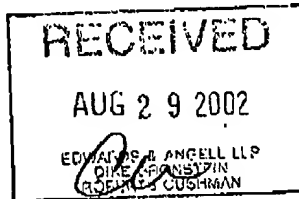


## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Andrew COMMISSIONER OF PATENTS AND TRADEMARKS  
 Washington, D.C. 20531  
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/576,290	05/23/2000	Shuji Himura	47176-DIV(342)	4462

Dike Bronstein Roberts & Cushman  
 Intellectual Property Practice Group  
 EDWARDS & ANGELL  
 P O Box 9169  
 Boston, MA 02209



EXAMINER
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ART UNIT	PAPER NUMBER
1647	

DATE MAILED: 08/26/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

*Ret to Withdraw Holding of Abandon*  
 Edwards & Angell LLP  
 Dike, Bronstein, Roberts & Cushman  
 101 Federal St. Boston, MA 02110  
 Date Rec'd 8/29/02  
 Docketed For 9/28/02 - 10/26/02  
 By See 8/29/02  
 Approved See 8/29/02

**Notice of Abandonment**

Application No.

09/576,290

Examiner

David S Romeo

Applicant(s)

HINUMA ET AL.

Art Unit

1647

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 12 December 2001.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

*David S Romeo*  
David S Romeo  
Primary Examiner  
Art Unit: 1647

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.